DETAILED ACTION

This office action is in response to the Amendment filed 28 December 2009.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-4, 6-8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Saito et al. (U.S. Patent Application Publication 2002/0088767). Regarding Claims 1 and 4, Saito et al., hereafter "Saito," show that it is known to carry out a method using a device for manufacturing a synthetic resin container (Abstract; [0002]), comprising the steps of forming a preform by performing compression molding to a drop which is synthetic resin molten lump with a compression molding machine ([0078], [0087-0088]), performing an even-heating treating of the preform, and then stretch blow molding ([0160]), performing continuously stretch blow molding to the preform with a stretch blow molding machine ([0156-0163]), and all the associated equipment necessary for the above steps ([0078], [0087-0088], [0156-0163]).

Regarding Claim 3, Saito shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein the even-heating treatment is a heating treatment ([0160]).

Regarding Claims 6 and 10, Saito shows the invention as claimed as discussed in the rejection of Claim 4, respectively, above, further including a method and device for heating and crystallizing a neck part of the container ([0163]).

Regarding Claims 7 and 11, Saito shows the invention as claimed as discussed in the rejection of Claim 4, respectively, above, including the apparatus and method features necessary for supplying the drop/preform formation/heating/blow molding features ([0101-0118], [0161-0162]).

Regarding Claims 8 and 12, Saito shows the invention as claimed as discussed in the rejection of Claim 4, respectively, above, including the apparatus and method features necessary for a blow molding step to be a two-step blow that forms a bottle ([0159], [0161], [0163]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito. Saito shows the process as claimed as discussed in the rejection of Claim 4, respectively, above, but he does not show an additional heater/step of heating. However, duplication of parts has no patentable significance unless a new or unexpected result is produced (MPEP 2144.04 (VI)(B)). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use as many heaters/heating steps as necessary to process the material so that it satisfies end-use specifications.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 4, 7, and 11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5-7 of U.S. Patent No. 6,716,386. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are merely broader versions of the patented claims, and therefore not patentably distinct therefrom, as they are effectively "anticipated" by the patented claims.

Claims 4, 7, and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 9-11 of copending Application No. 10/564445. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are merely broader versions of the patented claims, and therefore not patentably distinct therefrom, as they are effectively "anticipated" by the 10/564445 claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments filed 28 December 2009 have been fully considered but they are not persuasive.

Applicant contends that Saito does not show even preform heating follow its discharge from the compression mold. This is not persuasive because [0159] indicates that the preform retains some heat (not completely cooled after) the compression

molding step. Further, [0076], [0085], [0098-0100], and [0160] describe several times that the goal of Saito is to provide an evenly-processed, homogenous final product, and that therefore, the preform and materials are evenly processed during the entire formation process. Therefore, it is maintained that [0160] would also be an even heating to support the desired result of Saito.

Regarding other dependent claims, applicant contends that they are allowable for the same reasons as discussed with regard to claim 1. These are nonpersuasive, as noted above.

With respect to the Double Patenting rejections, applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA A. HUSON whose telephone number is (571)272-1198. The examiner can normally be reached on Monday-Friday 7:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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